



**ELK RUN ENERGY ASSOCIATES, LLC**

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September 11, 2008

Chad A. Stobbe  
Iowa Department of Natural Resources  
502 E. 9th Street  
Des Moines, Iowa 50319-0034  
Re: Proposed Changes to 567 I.A.C. Ch. 108

Dear Mr. Stobbe:

Elk Run Energy Associates, LLC ("Elk Run Energy") is developing a coal-fired electrical generation facility in Waterloo, Iowa. The coal combustion residue ("CCR") generated by the facility would be categorized as beneficial fill material pursuant to the current provisions of 567 Iowa Administrative Code Chapter 108. Pursuant to the terms of Section 108.6, Elk Run Energy intends to deposit the CCR as beneficial fill at quarries, allowing the quarries to be reclaimed for productive use at the conclusion of their useful life. The Iowa Department of Natural Resources has recently proposed amending Chapter 108 in a manner that will prohibit this and many other uses for these types of materials.

The rationale for the Department's proposal was set out in a memo to Iowa Stakeholders dated July 17, 2008. The only justification given for prohibiting the beneficial use of CCR as fill was that "these activities more closely resemble monofill and landfill projects than beneficial use projects." Elk Run Energy suggest that there are several reasons why this justification is inadequate for what will be a dramatic change to a regulatory scheme that has successfully encouraged the reuse of materials that would otherwise be land-filled as waste.

**1. Reclamation of Land is a Societal Benefit**

The existing beneficial use rules recognize a fact that is more important today than ever before – reclaiming, reusing and recycling benefits society. By definition (§108.3), beneficial use assumes that when a by-product is not harmful to human health or the environment, it should be allowed to be reused in a manner that will provide a benefit to society. Indeed, such reuse should be encouraged. The Department's proposal turns the concept of "reuse" on its head by saying that "while the use of solid by-products for fill can provide benefits, such fill projects are not beneficial use projects." The act of depositing CCR at a

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quarry has some outward appearances that are similar to depositing CCR at a landfill, but the end results are strikingly different. The quarry, which would otherwise remain as unproductive land, is returned to a use that would otherwise be unavailable. If the DNR's draft language is adopted, CCR will, in most instances, go to a landfill (in disregard of the waste stream reduction goals of Chapter 455D) or into monofills (taking productive land out of service). While increasing landfill burden, the proposal also substantially reduces the likelihood that reclamation of quarry land will occur. The proposal effectively takes two steps backward in environmental stewardship.

## **2. No Scientific Support**

Although not stated as a reason for its actions, one might presume that the Department's proposal is being advanced because the Department is aware of one or more situations where the use of some CCR fill has, in fact, caused damage to human health or the environment. If so, it is incumbent on the Department to document and make publicly available these instances so that critical questions about these instances can be addressed. For example, in how many instances were water quality violations identified in Iowa? What was the cause? What was the composition and source of the CCR? Certainly if CCR fill in quarries does adversely affect human health or the environment in Iowa, such a showing should be easily made. However, the current requirements of Chapter 108.6, including stringent leachate parameters, pH restrictions, and specific siting criteria relating to waterways, wetlands, floodplains, aquifers, sinkholes, and wells, make such a showing unlikely. For its part, Elk Run Energy is not aware of any instances in Iowa in which the beneficial use of CCR fill, used in accordance with the requirements of Chapter 108.6, has resulted in any harm to public health or the environment. Without some showing of such harm, the Department's proposal serves to damage, rather than improve, the environment by unnecessarily increasing the burden on landfills.

## **3. Costs of the Regulatory Change**

Elk Run Energy knows of no attempt by the Department to analyze the economic effect of the proposed regulation, but is informed that an economic impact analysis will be done after expiration of the comment period. The economic effect, at least with regard to prohibiting the use of CCR for quarry reclamation, will likely be significant. The cost of disposing of CCR at sanitary landfills or in monofills will exceed the current costs of using the CCR as beneficial fill. As a result, the cost of electricity for the affected Iowa based load serving entities would be expected to increase correspondingly, along with the costs for goods and services produced using electricity. While increasing the costs of addressing CCR may appeal to some groups, the Department has a duty to determine whether such increases have any support in law or science. Elk Run Energy believes that an accurate economic impact analysis will not support the proposal.

#### 4. No Rational Basis for Change

While it might be the Department's intent to create a brief in support of the proposed change, the statements made to date do not provide any rational basis justifying the proposed changes. The use of CCR for beneficial fill, a practice that has occurred for years in Iowa without any demonstrated harm to human health or the environment, allows the reuse of quarry land at a cost savings to Iowa's electric customers. A change that prohibits the recovery of quarry land while increasing energy costs and adding no protection to the environment must be considered arbitrary and capricious.

Elk Run Energy requests that the Department reconsider its proposed changes to 561 I.A.C. 108.6. Consideration should be given to allowing continued use of CCR for beneficial fill under the same terms as has been successfully used for years. The Department should promote the reduction of landfilling waste particularly when, as here, it results in the ability to reuse quarry land that would otherwise be unusable.

Thank you for the opportunity to comment on the proposed rule change. Please feel free to contact me at (636) 532-2200 with any questions you might have.

Sincerely,



David Wilson  
Senior Environmental Engineer